

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

16 Before the court is LightGuard Systems, Inc.’s (“LightGuard”) Emergency Motion to Compel.
17 (Doc. # 74.)¹ On December 5, 2011, a hearing was held on LightGuard’s motion. (Doc. # 91.) Both
18 LightGuard and Spot Devices, Inc. (“Spot”) were ordered to submit Amended Stipulated Scheduling
19 Orders listing the depositions to be rescheduled and identifying the specific topics on which witnesses
20 would be deposed. (*Id.*) In addition, LightGuard and Spot were ordered to file simultaneous briefs
21 addressing Spot’s claim of inadvertently producing certain documents and the alleged applicability of
22 the attorney-client privilege. (*Id.*) On December 30, 2011, LightGuard and Spot filed simultaneous
23 briefs (Doc. # 107 and # 109, respectively).

24 After reviewing the parties' briefs, the court now believes additional briefing on certain matters
25 would be of assistance to the court. Therefore, IT IS ORDERED that LightGuard and Spot shall file
26 supplemental briefs on the following points as they pertain to the appropriate party:

27 First, Spot shall clarify whether it considers all or part of Exhibit A protected by the attorney-

¹ Refers to court's docket number.

1 client privilege. If it considers all of Exhibit A protected by the attorney-client privilege, it shall
 2 explain how Exhibit A qualifies as “a communication” for purposes of the attorney-client privilege.
 3 If, however, Spot considers only part of Exhibit A protected, it shall identify which statements it
 4 considers privileged and explain the legal and factual basis on which the claim of privilege is
 5 predicated.

6 Second, Spot shall clarify whether it has abandoned the argument, asserted in a November 2,
 7 2011, email (Doc. # 111-1 at 1) from Palani Rathinasamy to Adam McMillen, that Exhibit A is
 8 protected by the work product doctrine. If Spot has not abandoned the argument, then it shall explain
 9 how Exhibit A was created in anticipation of litigation and why the work product doctrine applies to
 10 Exhibit A.

11 Third, Spot shall explain why Exhibit N satisfies the requirements governing the applicability
 12 of the attorney-client privilege to privilege logs as discussed in *Dole v. Milonas*, 889 F.2d 885, 888
 13 n. 3, 890 (9th Cir. 1989).

14 Fourth, assuming Exhibit A is “a communication,” LightGuard shall clarify its argument (Doc.
 15 # 107 at 8:3-4) that Exhibit A’s use in developing a “freedom to operate” plan (“FTO”) by Spot and
 16 Spot’s counsel, Seed IP, precludes Exhibit A from falling under the attorney-client privilege.

17 Fifth, LightGuard shall respond to Spot’s argument (Doc. # 109 at 4, 7) that the (1) joint client
 18 and (2) functional employee doctrines shield Exhibit A from waiver.

19 Sixth, both LightGuard and Spot shall explain and clarify the nature of their “agreement,” if
 20 any, concerning Exhibits B-L, as referenced in Spot’s Opposition to LightGuard Systems’ Omnibus
 21 Motion (Doc. # 109 at 8:18-24.)

22 IT IS FURTHER ORDERED that the LightGuard and Spot shall file simultaneous briefs on
 23 or before January 30, 2012. The Clerk of Court shall calendar this matter for a hearing.

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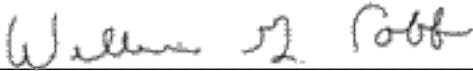
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1 **IT IS SO ORDERED.**

2 DATED: January 18, 2012

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4 WILLIAM G. COBB
5 UNITED STATES MAGISTRATE JUDGE

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